IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 346 OF 2004

Gujarat Maritime Board ... PETITIONER

V/s.

The Oriental Bank of Commerce & Ors. ... RESPONDENT

Mr. Pramod Nanavati with Ms. S. Gokhale i/b. Akshar Laws for the Petitioner.
Ms. Neeta Vyas with R. Zazrat for the Respondent No.1.

CORAM : F.I. REBELLO,
ANOOP V. MOHTA, JJ.

DATED : 14th March, 2006

P.C.

. The petitioners are aggrieved by the order of the DRT dated 17.04.2003 and the order dated 05.11.2003 of DRAT. It is a case of the petitioner that Receiver has been appointed in respect of the land belonging to them. The principal debtor to the Bank was only granted permissive possession to use the land for the purpose of shipbreaking. It is submitted that inspite of this both DRT and DRAT apart from appointing Receiver, permitted the bank to transfer the rights in the land to a beneficiary party by public notice or private treaty against appropriate premium. Prayer clause (f) was the prayer to the Bank to execute all the bills and documents relating to transfer of shipbreaking plot. Today appearence is put on behalf of the bank. Other respondents are not

present. It is stated on behalf of respondent bank that this Court in another petition preferred by principal debtor has dismissed the petition by directing the petitioner to approach the Tribunal.

2. Having heard the learned counsel and further on account of subsequent events, part of the order is required to be interfered. It is a case of the petitioner that on 30th September, 2004, subsequent to the period of licence having expired they have taken possession of the land on 09.11.2004 and are in possession of the land as of today. Even otherwise what we find is that the principal debtor had merely a permissive possession to use the premises belonging to the petitioner. No receiver could have been appointed and no relief could have been granted in terms of prayer clause (e) & (f) as prima facie the record shows that the petitioners had not created any interest in property in favour of the principal debtor. A licence does not create an interest in property. To that extent the petitioner is right that both DRT and DRAT acted in excess of jurisdiction by permitting the bank to transfer the shipbreaking rights in the land.

3. Considering the subsequent events and the fact

that the petitioners are now in possession of the property, the impugned order dated 17.04.2003 allowing Exh. 22 in terms of prayer clause (e) & (f) is set aside and consequently the order dated 05.11.2003.

4. All other issues would be open for consideration before DRT.

5. Rule is made partly absolute accordingly. Petition is disposed of with no order as to costs.

[F.I. REBELLO,J.]

[ANOOP V. MOHTA, J.]